

REMARKS

Favorable reconsideration of this application, as amended, and in light of the following discussion is respectfully requested. Claims 13-14, 16-17, 19-20, 23, 26-28, 31, 34-37, 40, 42-43, 54-90, and 97-126 are pending. Claims 13, 23, 31, 37, 42, and 54 have been amended. No new matter is added by these amendments. Claims 112-126 have been added. Support for these amendments can be found in the specification at, for example, paragraphs, [002], [004], [006], [032], [039], [041] and Examples 1-4.

First, Applicants would like to thank Examiner Paden for her indication that the rejections over Broz had been overcome by the filing of the 1.131 declaration and for the withdrawal of the rejection under 35 U.S.C. § 112.

Objections

Claim 42 has been objected to as depending upon a cancelled base claim. Applicants have herein amended claim 42 to correct this error. In view of the amendment withdrawal of this objection is respectfully requested.

Rejections Based upon Stefandl

The Examiner has rejected claims 13, 14, 16, 17, 19, 20, 23, 26-28, 31, 34-36, 37, 40, 42, 43, 55-58, 60, 62, 64-67, 69, 71, 73-76, 78, 80, 82-85, 87, 89, and 106-111 under 35 U.S.C. § 103(a) as being unpatentable over Stefandl in view of Beyts.

Stefandl is alleged to teach a freezer altering additive for a composition made from a carbohydrate, glycerol or propylene glycol and a sugar alcohol such as sorbitol or erythritol. The freeze altering composition is simply added to a bottle and the bottle is tossed in the freezer to form a slush beverage. The Examiner concedes that Stefandl

differs from the claimed invention which includes both the use of a high intensity sweetener in the product and a sugar alcohol as a sweetener. Beyts is added to address these deficiencies. This rejection is respectfully traversed.

Claims 13, 23, 31 and their dependent claims

While Applicant's disagree with the Examiner's characterization of the previously presented claims as addressing only intended use of the product, they have nonetheless amended claims 13, 23 and 31 to more particularly point out that the invention is directed to the reduced calorie frozen beverage in combination with a mechanical dispenser including a mechanical mixing chamber for dispensing the frozen beverage. As discussed at length in previous responses, none of the cited art, alone or in combination, disclose a reduced calorie beverage capable of being dispensed from a mechanical dispenser. Specifically, neither Stefandl nor Beyts teach such a dispenser, which is now positively recited in claims 13, 23 and 31. In view of the amendment to these claims, their immediate allowance is respectfully requested.

Claim 37 and it's dependents (and newly added claim 112 and its dependents)

These claims all recite a beverage which is capable of being dispensed from a mechanical dispenser. Contrary to the position taken by the Examiner, this is not just an intended future use. It is a physical limitation on the beverage syrup. Nothing within Stefandl or Beyts teaches or suggests that the beverage syrup as disclosed therein is appropriate for dispensing from a mechanical dispenser having a mechanical mixing chamber. Stefandl's product is specifically described for use in a container which is

placed in a home freezer. Since Stefandl does not teach a beverage capable of being dispensed from a dispenser including a mechanical mixing chamber, withdrawal of this ground of rejection is respectfully requested.

Rejections based on Marulich

Claims 13, 14, 16, 17, 19, 20, 23, 26, 27, 28, 31, 34, 35, 37, 40, 43, 54-90, 97-102 and 106-110 have been rejected under 35 U.S.C. § 103(a) over Marulich in view of Beyts and in some instances in further combination with one or more of Cole, DeCock and Anderson. The Examiner maintains this rejection for the reasons of record.

Claims 13, 23, 31 and their dependent claims

As discussed above, while Applicants disagree with the Examiner's characterization of the previous claims as addressing only intended future use of the product, they have nonetheless amended claims 13, 23 and 31 to more particularly point out that the invention is directed to a reduced calorie frozen beverage in combination with a mechanical dispenser including a mechanical mixing chamber for dispensing the frozen beverage. Marulich, like Stefandl, is concerned with the production of slush beverages in a home freezer. For all of the reasons of record, there is no suggestion that the beverage of Marulich even as modified by Beyts, Cook, DeCock, Anderson would be capable of being dispensed from a mechanical dispenser. The Examiner's only noted objection to Applicants' previously presented arguments over Marulich is that they "are intended future use." In view of the amendment to these claims specifically reciting the dispenser in combination with the beverage, their immediate allowance is respectfully requested.

Claim 37 and it's dependents (and newly added claim 112 and its dependents)

These claims all recite a beverage which is capable of being dispensed from a mechanical dispenser. Contrary to the position taken by the Examiner, this is not just an intended future use. It is a physical limitation on the beverage syrup. As with Stefandl discussed above, nothing within Marulich teaches or suggests that the beverage syrup as disclosed therein is appropriate for dispensing from a mechanical dispenser having a mechanical mixing chamber. Marulich's product, like that of Stefandl, is specifically described for use in a container which is placed in a home freezer. Since Marulich, alone or in combination with the other cited references, does not teach a beverage capable of being dispensed from a dispenser including a mechanical mixing chamber, withdrawal of this ground of rejection is respectfully requested.

Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully request the reconsideration and the continued examination of this application and the timely allowance of the pending claims.


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Please grant any extensions of time required to enter this response and charge
any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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